

APPEAL NO. 020538  
FILED APRIL 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 5, 2002. The hearing officer resolved the disputed issue by determining that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that the claimant had no disability from a compensable injury. The claimant appeals the hearing officer's determinations on sufficiency grounds and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant testified that he had sustained a low back injury when he fell off an expediter while working for the employer on \_\_\_\_\_; that he immediately reported the injury; that he was fired the day after he reported the injury; and that he has not been able to work since \_\_\_\_\_. The carrier presented evidence to support its assertions that the claimant had no work-related injury or disability; that the claimant filed a spite claim; and that he did not report an alleged injury until after he was terminated from employment.

The hearing officer made findings of fact and concluded that the claimant did not sustain a compensable injury on \_\_\_\_\_. The claimant had the burden to prove that he was injured in the course and scope of his employment. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084, *supra*. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084, *supra*. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and

unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm her determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Edward Vilano  
Appeals Judge